

Chapter 227 WETLANDS AND WATERCOURSES

[HISTORY: Adopted by the Board of Trustees of the Village of Croton-on-Hudson 6-20-1988 by L.L. No. 4-1988. Amendments noted where applicable.]

GENERAL REFERENCES

Boats and boating – See Ch. 83.
Building construction – See Ch. 86.
Environmental quality review – See Ch. 116.
Erosion and sediment control – See Ch. 118.
Flood damage prevention – See Ch.129.
Steep slopes – See Ch. 195.
Subdivision of land – See Ch. 200.
Tree preservation – See Ch. 208.
Water supply protection – See Ch. 223.

ARTICLE I, Findings and Intent

§ 227-1. Legislative findings.

The Board of Trustees of the Village of Croton-on-Hudson finds that growth of population and attendant residential and commercial development and increasing demands upon natural resources have the potential of encroaching upon, despoiling, polluting or eliminating many of the wetlands, water bodies and watercourses of the village which, if preserved, constitute important physical, economic, social, historic, archaeological, aesthetic, recreational and ecological assets to present and future residents of the village and provide important beneficial functions, including natural flood and stormwater control, groundwater recharge, natural pollution treatment, erosion and sediment control, wildlife habitat creation, recreation and open space enhancement and educational opportunities.

§ 227-2. Legislative intent.

It is the intent of this chapter to protect the public interest, general health, safety, economic and general welfare of the citizens of the village by providing for the protection, preservation, proper maintenance and use of its wetlands, water bodies and watercourses by preventing damage from erosion or siltation, minimizing disturbance, preserving natural habitats and protecting against flood and pollution through the establishment of a Water Control Commission and otherwise protecting the quality of such areas for their conservation, economic, aesthetic, recreational and other public uses and values. Further, it is the intent of this chapter to protect the surface and groundwater resources wholly and partly within the village from the threat of pollution, misuse or mismanagement. Therefore, because all wetlands, water bodies and watercourses are presumed to be of importance, it is hereby declared that the regulation of controlled areas of the village, as defined in § 227-3 of this chapter and as this chapter becomes effective relative to any

specific area as described in Article II, is essential to the health, safety, economic and general welfare of the citizens of the village.

ARTICLE II, Definitions

§ 227-3. Terms defined.

The following terms, phrases or words and their derivations shall have the meanings given herein:

AGRICULTURE -- The act of raising crops for economic gain; as further defined in 6 NYCRR 663.2(c).

APPLICANT -- Any individual or individuals, firm, partnership, association, corporation, company, organization or other legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof, filing an application pursuant to this chapter.

BOARD OF TRUSTEES -- The Board of Trustees of the Village of Croton-on-Hudson.

CLEAR-CUTTING -- The cutting of more than 1/2 of the existing living trees measuring more than eight inches in diameter three feet from the ground in an area 1/4 acre or more over the period of five consecutive years.

CONTROLLED AREAS -- Boundaries of "controlled areas" will be established when requested by the Water Control Commission, following the appropriate field work by qualified staff members of the Westchester County Soil and Water Conservation District, the New York Department of Environmental Conservation or other qualified individuals approved by the Water Control Commission. "Controlled areas" shall be defined as the following:

- A. **WATER BODY** -- Any body of standing water which exists at least six months of the year and which, when wet, is customarily more than 5,000 square feet in water surface area.
- B. **WATERCOURSE** -- Any body of water flowing in an identifiable channel or course at least six months of the year. The "controlled area" of such "watercourses" shall be that area between the tops of the banks of the watercourse. In the absence of adjoining wetlands, as defined in Subsection C, the minimum activity setback, as later defined in this section, shall be measured from the top of the bank of the "watercourse."
- C. **RAINFALL DRAINAGE SYSTEM** -- Those existing interconnected networks of depressed contours and enlargements thereto which, by virtue of their location, convey surface water runoff from its source to its ultimate points of discharge. The minimum activity setback of such "rainfall drainage system" shall include the greater of:
 - (1) All adjacent contributory surfaces of elevation less than five feet above the high-water mark from a once-in-ten-year-frequency storm; or
 - (2) All adjacent contributory surface within 100 feet measured horizontally in all directions

from the high-water made from a once-in-ten-year-frequency storm.

- D. WETLANDS -- ~~Those geographical areas of 1/4 acre or more inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including but not limited to wetlands as shown on the Freshwater Wetlands Map, as such map may, from time to time, be amended, filed by the Commissioner of the Department of Environmental Conservation pursuant to the Freshwater Wetlands Act of the State of New York.~~^{EN(1)} Without limitation, the following categories shall apply:
- (1) FRESHWATER MEADOWS -- Areas without standing water during the growing season but with waterlogged soil and with at least 50% of the vegetation in the area consisting of but not limited to the following characteristic vegetation: cattails (*Typha* species), rushes (*Juncus* species) and sedges (*Carex* species), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinace*), swamp loosestrife (*Decodon verticillatus*) and spikerush (*Eleocharis* species) often growing in tussocks.
 - (2) Inland shallow freshwater marshes -- Areas with waterlogged soil during the growing season covered with up to six inches of water and with at least 50% of vegetation in the area consisting of but not limited to the following characteristic vegetation: bulrushes (*Scripus* species), spikerushes (*Eleocharis* species), cattails (*Typha* species), arrowhead (*Sagittaria* species), smartweed (*Polygonum scandens*), pickerelweed (*Pontederia cordata*), bur reeds (*Sparganium* species), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*) and water plantain (*Alisma plantago-aquatica*), arrow arum (*Peltandra virginica*) and sedges (*Carex* species).
 - (3) INLAND DEEP FRESHWATER MARSHES -- Soil covered with six inches to three feet of water and with at least 50% of the vegetation in the area consisting of but not limited to the following characteristic vegetation: cattails (*Typha* species), reeds (*Phragmites communis*), bulrushes (*Scripus* species), spikerushes (*Eleocharis* species), bur reeds (*Sparganium* species), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*) and water plantain (*Alisma plantago-aquatica*), water lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*) and spatterdock (*Nuphar* species), duckweed (*Lemna* species), big duckweed (*Spirodela polyrhiza*), watermeal (*Wolffia* species) and wild rice (*Zizania aquatica*).
 - (4) SHRUB SWAMPS -- Areas with waterlogged soil covered with up to six inches of water and with at least 50% of the vegetation in the area consisting of but not limited to the following characteristic vegetation: alders (*Alnus* species), willows (*Salix* species), button bush (*Cephalanthus occidentalis*), red twig dogwoods (*Cornus stolonifera*), silky dogwood (*Cornus amomum*), bog rosemary (*Andromeda glaucophylla*) and leatherleaf (*Chamaedaphne calyculata*).
 - (5) WOODED SWAMPS -- Areas with waterlogged soil covered with up to one foot of water and with at least 50% of the vegetation in the area consisting of but not limited to the following characteristic vegetation: red maple (*Acer rubrum*), silver maple (*Acer saccharinum*), sour gum (*Nyssa sylvatica*), tamarack (*Larix laricina*), northern white cedar (*Thuja occidentalis*) and Atlantic white cedar (*Chamaecyparis thyoides*).
 - (6) BOGS -- Areas characterized by an accumulation of sphagnum moss (*Sphagnum*

- species) as peat and with at least 50% of the vegetation in the area consisting of but not limited to the following characteristic vegetation: Atlantic white cedar (*Chamaecyparis thyoides*), pitcher plant (*Sarracenia purpurea*), bog rosemary (*Andromeda glaucophylla*) and cranberries (*Vaccinium macrocarpon* and *Vaccinium oxycoccos*).
- (7) SUBMERGENT VEGETATION -- Includes but is not limited to pondweeds (*Potamogeton* species), naiads, (*Najas* species), bladderworts (*Utricularia* species), wild celery (*Vallisneria americana*), coontail (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* species), muskgrass (*Chara* species), stonewort (*Nitella* species), waterweeds (*Elodea* species) and water smartweed (*Polygonum amphibium*).
- (8) FLOODPLAINS -- Flat, low-lying areas bordering a river or stream which are seasonally flooded and with at least 50% of the vegetation in the area consisting of but not limited to the following characteristic vegetation: red maple (*Acer rubrum*), elms (*Ulmus* species), alders (*Alnus* species), willows (*Salix* species), black spruce (*Picea mariana*), swamp white oak (*Quercus bicolor*), red ash (*Fraxinus pennsylvanica*) and red twig dogwoods (*Cornus* species); and areas of special flood hazard as defined by the Federal Insurance Administration on the latest Flood Hazard Boundary Maps on file at the village office of the Building Inspector.
- (9) UPLAND DRAINAGE AREAS -- Areas of seasonally, sometimes steep, waterlogged soil containing small permanent or intermittent streams or occurring at the beginning of a drainage sequence and with at least 50% of the vegetation in the area consisting of but not limited to the following characteristic vegetation: red maple (*Acer rubrum*), elms (*Ulmus* species), dogwoods (*Cornus stolonifera*), spicebush (*Lindera benzoin*), summer sweet (*Clethra alnifolia*), jewelweed (*Impatiens capensis*), sensitive fern (*Onoclea sensibilis*), cinnamon fern (*Osmunda cinnamomea*) and skunk cabbage (*Symplocarpus foetidus*).
- E. Lands and submerged lands containing remnants of any vegetation that is not aquatic or semiaquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six feet, and provided further that such conditions can be expected to persist indefinitely, barring human intervention.
- F. Lands and waters enclosed by aquatic or semiaquatic vegetation as set forth in Subsection C above and dead vegetation as set forth in Subsection D above, the regulation of which is necessary to protect and preserve the wetland.
- G. The waters overlying the areas set forth in Subsections B, C and D above.
- H. POORLY DRAINED SOILS -- Those areas with somewhat poorly drained, poorly drained and very poorly drained soils as provided by data of the United States Department of Agriculture Soil Conservation Service, including but not limited to the following classifications, as may be updated or amended by the Soil Conservation Service from time to time:

Soils List

25 Sun loam

27	Sun, extremely stony silt loam
28	Fredon
35	Raynham silt loam
101	Carlisle muck
103	Freshwater marsh
251A	Ridgebury loam
311	Fluvaquent
1011	Palms muck
1251A	Leicester loam
1252B	Leicester, very stony loam

I. PROHIBITED BUFFER ZONE -- Any adjacent surfaces within 20 feet measured horizontally in all directions from the edge of any controlled area defined above.

DEPOSIT -- To fill, place, eject or dump any liquid, solid or gaseous material, or the act thereof, but not including stormwater.

FRESHWATER WETLANDS MAP -- The final Freshwater Wetlands Map promulgated by the New York State Department of Conservation as defined in 6 NYCRR 663.2(p).

GARDENING -- The raising of vegetables, berries, other edible items or flowers or decorative plants on an area of less than or equal to 100 square feet for the use of the homeowner, when such endeavor is not for the purpose of economic gain.

MATERIAL -- Substances, including but not limited to soil, silt, gravel, rock, sand, clay, peat, mud, debris and refuse, any organic or inorganic compound, chemical agent or matter (excluding pesticides, herbicides, algacides and agricultural or radioactive wastes to the extent that the same are exempt or regulated exclusively by the state), sewage sludge or effluent or solid waste (industrial or municipal).

MINIMUM ACTIVITY SETBACK -- The minimum buffer area required by this chapter between a proposed activity and controlled area, as defined herein. "Minimum activity setbacks" shall be 100 feet, measured horizontally in all directions from the edge of the prohibited buffer zone. Proposed activities within the "minimum activity setbacks" described above are subject to permits as described in Articles IV and V. Proposed activities outside of the "minimum activity setbacks" described above are exempt from this chapter.

PERSON -- See "applicant."

PLANNING BOARD -- The Planning Board of the Village of Croton-on-Hudson.

POLLUTION -- The presence in the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant or animal life or to property.

REMOVE -- To dig, dredge, suck, bulldoze, dragline, blast or otherwise excavate or regrade, or the act thereof.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) -- A law pursuant to Article 8 of the New York Environmental Conservation Law providing for environmental

quality review of actions which may have a significant effect of the environment.^{EN(2)}

VILLAGE ENGINEER -- Any person employed as a Village Engineer of the Village of Croton-on-Hudson.

WATER CONTROL COMMISSION -- The Water Control Commission of the Village of Croton-on-Hudson (hereinafter sometimes referred to as the "Commission"), which acts as the review and approval authority for all permits issued under this chapter.

ARTICLE III, Water Control Commission

§ 227-4. Creation and organization.

The Board of Trustees is hereby authorized and empowered to create, within 90 days of the effective date of this chapter, a Water Control Commission, which shall consist of five resident members, who shall be qualified by reason of training or experience in engineering, in water-related science, community planning, conservation, landscape architecture, wildlife management, forestry, ecology, hydrology or other related business or profession. The Commission may also obtain access to such training through qualified consultants. The members and the Chairman of the Water Control Commission shall be appointed by the Mayor subject to the approval of the Board of Trustees, and the Board of Trustees may authorize and budget for such expenses as may be necessary and proper. Each member of the Commission shall serve for a term of five years, provided that, of the members first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years and one for term of five years. If a vacancy shall occur other than by expiration of a term, it shall be filled by the Mayor, subject to the approval of the Board of Trustees, by appointment to the unexpired term. The Mayor shall, subject to the approval of the Board of Trustees, designate a member of the Commission to act as Chairman thereof, or, on failure so to do, the Commission shall elect a Chairman from its own members. Meetings of the Commission shall be held at such times as the Commission may determine. All business of the Commission shall be conducted at public meetings. Three members of the Commission shall constitute a quorum for holding a hearing and making a decision on an application. The Commission shall keep minutes of its proceedings, showing the vote of each member upon any question or, if absent or failing to vote, indicating such fact, and shall also keep records of its official actions.

§ 227-5. Records of actions; filing of regulations.

Every decision, recommendation or determination of the Commission shall be filed in the office of the Village Manager and shall be a public record. The Water Control Commission shall have the power to adopt, amend and repeal rules and regulations consistent with this chapter governing its procedure and transaction of business consistent with Public Officers Law § 100. All rules and regulations and amendments or repeal thereof shall take effect immediately upon filing in the office of the Village Manager, after approval by the Board of Trustees.

§ 227-6. Function of Village Engineer.

The Village Engineer or consulting engineer shall furnish to the Water Control Commission such recommendations and engineering data as the Water Control Commission shall request and require. The Village Engineer or consulting engineer shall advise the Water Control Commission on all other matters within the jurisdiction of the Water Control Commission under this chapter and, upon request of the Water Control Commission, shall be present at the meetings and deliberations of the Water Control Commission.

§ 227-7. Powers and duties.

The powers and duties of the Water Control Commission under this chapter shall be as follows:

- A. Review and action. The Water Control Commission shall review applications for and take appropriate action on projects submitted within its jurisdiction pursuant to Article V of this chapter.
- B. Establishing boundaries of controlled areas. In connection with each application, the boundaries of a controlled area shall be established by the Water Control Commission.
- C. Compliance with SEQRA. For each application submitted to the Water Control Commission, it shall, pursuant to the requirements of SEQRA, make a determination of significance of the proposed action when none has been made by any other agencies and, further, determine appropriateness of acting as the lead agency and any requirement for a draft environmental impact statement when necessary.
- D. Power to grant or deny. The Commission shall have the power to grant or deny wetlands activity permits to conduct activities regulated under this chapter, but permits will be granted only when they do not violate the intent and purposes of this chapter or the State Freshwater Wetlands Act.
- E. Advisory and educational functions. The Water Control Commission shall investigate and report upon water conservation and drainage problems referred to it by the Board of Trustees, the Village Planning Board, the Village Engineer or the general public; coordinate Village of Croton-on-Hudson water planning with the planning of adjacent communities, counties and adjacent governmental authorities, and increase public knowledge and awareness of sound wetland management.
- F. Power to require restoration. The Water Control Commission shall have the power to determine whether a person who has violated any of the provisions of § 227-9 of this chapter shall be required to restore, to the extent possible, the disturbed area to its original condition, to specify a reasonable time limit for such restoration and to order and supervise such restoration.
- G. The Commission shall have the power to:
 - (1) Application fees: recommend to the Board of Trustees the application fees for permits to

conduct activities under this chapter.

- (2) Bonds: set and recommend bonds as it deems necessary as a condition of a permit granted under this chapter to insure compliance with the terms of the permit.
 - (3) Administrative fees: recommend to the Board of Trustees engineering, consulting and administrative fees for applications where the same may be appropriate as determined by the Board of Trustees.
 - (4) Fines: set and collect fines not to exceed \$3,000 per violation. (See § 227-44A.)
 - (5) The Planning Board shall periodically propose revisions to the Village Wetlands Map to reflect changes in existing wetlands or to include wetlands not hitherto designated.
 - (6) Upon approval of the Board of Trustees, retain staff and consultants as necessary and when needed to assist the Commission in the performance of its duties.
- H. Power to inspect controlled areas on private property. The Commission or its agents and the Village Engineer shall have the right to enter and inspect controlled areas and /or minimum activity setback areas on private property for the purpose of administering and enforcing the provisions of this chapter. Such access shall be upon reasonable notice or attempt thereof to the landowner under the circumstances.

ARTICLE IV, Controlled Areas and Minimum Activity Setback Areas

§ 227-8. Prohibited activities in controlled areas.

~~It shall be unlawful in a controlled area or minimum activity setback to place or deposit toxic substances (as defined in Article 48 of the State Public Health Law), wastes of any description, debris or sewage effluent or to introduce influents of sufficiently high thermal content as to cause deleterious ecological effect or to use or operate motor vehicles or off-road vehicles of any kind.~~

§ 227-9. Activities permitted by right.

The following activities are permitted as a matter of right within a controlled area and/or minimum activity setback area. No permit is required for:

- A. Conservation: the conservation of soil, water, vegetation, fish and wildlife.
- B. Recreation: outdoor recreation, including field trails, nature studies, hiking, horseback riding, swimming, camping and boating, except boats powered by internal-combustion engines.
- C. Operation and maintenance of water-control structures: the operation and maintenance of dams, bridges, retaining walls and other water-control devices having been previously approved under this chapter or existing prior to the effective date, excluding the temporary

alteration or diversion of water levels of circulation for repair or maintenance purposes.

- D. Activities not requiring a structure: activities not requiring a structure or building, accessory to residential or other permitted primary uses of lands or water, including the following, provided that they are consistent with the intent of this chapter:
 - (1) Normal grounds maintenance without chemical fertilizing, except where otherwise regulated in this chapter.
 - (2) Tree trimming, pruning and bracing.
 - (3) Ordinary repair and maintenance of existing stone walls and retaining walls.
- E. Emergency work: In the case of an emergency, a permit will not be required for work in a controlled area or minimum activity setback which is immediately necessary to protect the health and safety of any person or to prevent or alleviate property damage, provided that the Village Engineer is notified as soon as reasonably possible, but not later than 24 hours after the commencement of such work. Such emergency work shall be performed solely to alleviate the emergency conditions in a manner which causes the least change, modification, disturbance or damage to the controlled area.
- F. Deposition/removal of natural products: the deposition or removal of natural products of wetlands through agriculture or fishing, where otherwise legally permitted and regulated.

§ 227-10. Activities requiring permit. [Amended 8-3-1992 by L.L. No. 6-1992]

- A. The following activities, unless exempted pursuant to the provisions of § 227-10B of this chapter, are expressly prohibited within a controlled area or minimum activity setback without a wetlands permit issued pursuant to Article V of this chapter:
 - (1) Deposition/removal in controlled or minimum activity setback areas: deposition or removal, either directly or indirectly, of material from controlled or minimum activity setback areas.
 - (2) Drainage/alterations in controlled areas: draining or altering of any controlled area except for agriculture purposes allowed under § 227-9F.
 - (3) Alteration of waterways: alteration, either directly or indirectly, of natural drainage systems and/or the velocity, volume, temperature or direction of any wetland, water body or watercourse.
 - (4) Construction: construction of, without limitation, buildings, structures, roads, dams, driveways, culverts, water-control devices, pilings, bridges, tennis courts, swimming pools, decks, docks, wells or septic systems.
 - (5) Pollution: discharge of any contaminant or pollutant, from any point or nonpoint source into any controlled area or minimum activity setback, including, without limitation, the running of a sewer outfall, the discharge of any sewage treatment effluent or other liquid wastes or the installation of a septic tank or field.

- (6) Clear-cutting: clear-cutting of trees, as defined in § 227-3.
 - (7) Grazing: grazing of horses or other animals for nonagriculture purposes.
 - (8) Manure storage: storage of manure.
 - (9) Application of chemicals: application or addition of any algacide, herbicide or other growth-regulating agent, both aqueous and nonaqueous.
 - (10) Gardening: gardening in the minimum activity setback area only, where otherwise in accordance with applicable state and local laws and ordinances.
 - (11) Lines and cables: installation of any service lines, cables, pipes or any conduits of any description whatever.
 - (12) Miscellaneous: any other activity not specifically enumerated in this chapter.
- B. Any activity outside a controlled area and its ~~prohibited buffer zone~~ that the Water Control Commission, by majority vote of all its members, determines will not adversely impact the controlled area shall be exempted from the requirement of obtaining a wetlands activity permit.
- (1) To qualify for such an exemption, the activity must not require an excavation and/or fill permit under Chapter 120 of the Village Code.
 - (2) In granting an exemption under this section, the Water Control Commission may impose such conditions as it deems necessary to safeguard controlled areas.
 - (3) In order to enable the Commission to make a determination whether the activity should receive an exemption under this section, the Commission may require the applicant for an exemption to furnish such information regarding the proposed action as the Commission deems appropriate.
 - (4) If, after granting an exemption, the Commission determines that any of the circumstances relating to the action have changed so that it may adversely impact a controlled area, the Commission may rescind the exemption and require the applicant to obtain a wetlands activity permit in accordance with the provisions of this chapter.
 - (5) Any exemption granted by the Water Control Commission, including any conditions imposed by the Commission pursuant to such an exemption, shall be reflected in the minutes of the Commission.
 - (6) An administrative fee, as set by the Board of Trustees, shall be paid for each application for an exemption pursuant to this section.

ARTICLE V, Permit Procedure

§ 227-11. Application for permit.

Application forms for a wetlands activity permit under this chapter shall be obtained from the Village Engineer and shall include the following information:

- A. Name/address: the name, address and telephone number of applicant and, if the applicant is not the owner, the written consent of the owner must be attached.
- B. Tax Map designation: the street address and Tax Map designation of property involved.
- C. List of property owners: a list of adjacent and nearby property owners and property owners 100 feet upstream and 500 feet downstream whose rights or interests may or will be affected by the proposed action.
- D. Plans/specifications: detailed plans and specifications for the proposed wetlands activity, drawn to a scale of not smaller than one inch equals 50 feet, showing the following:
 - (1) Location of disturbed area: the location of the area proposed to be disturbed and its relation to property lines, buildings, roads, controlled areas and watercourses within 250 feet.
 - (2) Quantity of material: estimated quantities of material to be deposited or removed.
 - (3) Location of wells/septics: the location of any well and depth thereof and of any septic or other waste disposal system within 250 feet of the proposed operation or project.
 - (4) Drainage system details: the details of any drainage system proposed both for the construction process of the system and the final development and maintenance of the system.
 - (5) Construction details/deposition of spoil: where creation or enlargement of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other watercontrol devices and of deposition of the spoil material.
 - (6) List of affected functions: a list of all beneficial functions of the wetland, water body or watercourse which will be affected by the application.
 - (7) Details of protection procedure: a diagram showing what erosion controls will be installed and a schedule for their installation and maintenance.

§ 227-12. Additional information required.

Applications may, in addition to the items listed in § 227-11 above, be required to include existing and adjusted contours at two-foot intervals in the area of the proposed operation or project and to a distance of 50 feet beyond said operation or project when the Commission or Village Engineer feels that the inclusion of such information is necessary to the proper evaluation of the application. The Commission or Village Engineer shall notify the applicant within 45 days of receipt of an application if such additional information is necessary.

§ 227-13. Fees.

Each application shall be accompanied by an application fee, as set from time to time by the Board of Trustees.^{EN(3)} No application shall be considered complete by the Commission or the Village Engineer until the application fee has been received by the village.

§ 227-14. Statement of impact on upstream and downstream areas.

Applications affecting the water retention capacity, water flow or other drainage characteristics of any water body, watercourse, rainfall drainage system or wetland shall include a statement and numerical calculations of the impact of the project on upstream and downstream areas giving appropriate consideration to other than normal levels of watercourses and amounts of rainfall, specifically the one-hundred-year storm.

§ 227-15. Additional application information.

Applications should also contain such other design specifications, engineering studies or impact considerations as the approval authority may deem necessary.

§ 227-16. Burden of proof.

The applicant shall provide any other information the Commission feels is necessary to demonstrate that the proposed activity is not adverse to the general health, safety and economic and general welfare of the residents of the village.

§ 227-17. Distribution of copies.

Seven completed copies of the application, together with a single copy of the specified supporting plans and documentation, including an environmental clearance form or environmental assessment form, where necessary, shall be filed with the Village Engineer, who shall retain two copies and forward five copies to the Commission. Applications under this chapter involving subdivision, site development plan or special permit approval by the Planning Board or Board of Trustees shall be submitted concurrently with the application for such preliminary subdivision approval, site development plan approval or special permit approval.

§ 227-18. Professional preparation of plans.

Plans and specifications for all applications requiring Commission approval shall be prepared and certified by an engineer, landscape architect or architect licensed by the State of New York. The Commission may, upon request by an applicant, waive this requirement in its discretion.

§ 227-19. Public hearing.

Following receipt of an application determined by the Commission to be complete, the Commission shall call a public hearing on such application to be held within 60 days.

§ 227-20. Notice of public hearing. [Amended 11-6-1993 by L.L. No. 5-1993]

Notice of the hearing shall be given in the same manner as prescribed for the approval of plats under § 7-728 of the Village Law, and, in addition, the village shall notify the owners of record of all property within 200 feet, or such greater distance as the Commission may require, of the exterior boundaries of the area proposed to be disturbed. Such service shall be made by mail and shall be made at least 10 days before the date set for the hearing.

§ 227-21. Withdrawal of application.

Any applicant may withdraw his or her application at any time prior to the Commission's final action thereupon. Any application fee paid by the applicant pursuant to § 227-13 of this chapter shall not be refunded to any applicant who so withdraws his or her application before any action is taken on the application.

§ 227-22. Written decision.

Within 45 days after the close of any public hearing pursuant to § 227-19 hereof or in accordance with the time schedules established under SEQRA, where applicable, the Commission shall render a written decision to approve, deny or approve with modifications the application, giving due consideration to the findings and recommendations of the Village Engineer, where appropriate. Such decision shall include a statement of findings upon which the Commission has relied in its decision. In approving any application, the Commission may impose such conditions as it determines necessary to ensure compliance with the intent and purposes of this chapter. The Village Engineer is authorized to issue a permit upon filing of the Commission's decision with his own office and that of the Village Manager.

§ 227-23. Notice to Planning Board.

When the proposed scope of work of any application affects lands requiring subdivision or site plan approval by the Planning Board, the Water Control Commission shall render its determination to the Planning Board within time limits specified by the Planning Board as being necessary to comply with the Subdivision Regulations^{EN(4)} and § 7-728 of the Village Law. Failure to render a decision within the time limits set forth shall not be deemed an approval of the application. However, failure to render a decision within said time limit shall not prevent the Planning Board from rendering its determination on the subdivision.

§ 227-24. Standards for permit decisions.

In granting, denying or granting a permit with conditions, the Commission shall consider the following:

- A. Evidence: all evidence offered at or before any public hearing.
- B. Reports: any reports from other village boards or committees or federal, state or municipal agencies.
- C. Requested information: additional requested information.
- D. Other data: all relevant facts and circumstances, including but not limited to the following:
 - (1) Environmental impact: the environmental impact of the proposed action.
 - (2) Alternatives: the alternatives to the proposed action.
 - (3) Health and safety: whether the proposed action will have a deleterious effect on the general health, safety and economic and general welfare of the residents of the village or its neighboring communities.
 - (4) Wetland safeguards: whether the proposed action will have adequate safeguards for the protection and preservation of the environment and proper maintenance of any affected ponds or controlled areas, including water bodies, watercourses, rainfall drainage systems and wetlands, and the natural functions of and the benefits derived from such areas.
 - (5) Groundwater safeguards: whether the proposed action will have adequate safeguards employing the best available technology to protect the surface and ground water resources of the village from drought, pollution, overuse and other forms of misuse.
 - (6) Environmental protection: whether the proposed action has been planned, designed or constructed so as to create minimal disturbance; to prevent or mitigate damage from erosion, turbidity or siltation; to preserve the natural flora and fauna and their habitat; to protect against flood and pollution of the controlled area affected; and to protect any other benefits of wetlands, water bodies or watercourses as discussed in Article I and is the best alternative available for the proposed action.
 - (7) Alternative sites: there is no practicable alternative site for the proposed activity in an area of the subject property which is not a wetland, water body or watercourse.
 - (8) New York State land use standards: whether the proposed action is in compliance with the standards set forth in 6 NYCRR 665.7(e) and (g).
 - (9) Balance of rights: the extent to which the exercise of property rights and the public benefit derived from such use may or may not outweigh or justify the possible degradation of the wetland, water body or watercourse, the interference with the exercise of other property rights and the impairment or endangerment of public health, safety and

welfare.

§ 227-25. Conditions for approval.

No permit shall be issued by the Commission pursuant to this chapter unless the Commission shall find that:

- A. Consistent with legislative intent: the proposed activity is consistent with the legislative intent of this chapter set forth in § 227-2.
- B. No alternative: there is no practicable alternative or the proposed action is not harmful to the wetlands.
- C. Burden of proof. The applicant shall have the burden of proof of demonstrating that the proposed activity is not adverse to the general health, safety and economic and general welfare of the residents of the village or its neighboring communities, that it will not degrade the environment or result in any of the adverse impacts stated in Article I, and that the applicant will otherwise suffer undue hardship if a permit is not issued.

§ 227-26. Grant or denial of permit.

In granting a permit, denying a permit or granting a permit with conditions, the Commission shall state upon the record its reasons for granting or denying such permit. The statement may include discussion of the considerations and criteria listed in §§ 227-24 and 227-25 of this chapter.

- A. Reasons for decision. In denying a permit or denying a permit in part, the Commission shall state upon the record its reasons for denying such permit. The statement may include discussion of the considerations listed in § 227-24 of this chapter.
- B. Permission to resubmit. The Commission's statement in denying a permit may include permission to modify, amend or correct the applicant's proposal. Such permission to resubmit may only be granted once with respect to any application.
- C. Applicant's recourse. In the event of denial with or without permission to modify, amend or correct, the applicant may submit a new application or may seek judicial review pursuant to § 227-38 of this chapter.
- D. Rejection of modified proposal. The rejection of a modified proposal shall be equivalent to a denial of an application for the purposes of § 227-38 of this chapter.
- E. Public acquisition of wetlands. Duly filed notice, in writing, that the state or any agency or subdivision thereof is in the process of acquiring any wetlands by negotiation or condemnation shall be sufficient basis for denial of any permit.

§ 227-27. Expiration of permits.

No permit shall be valid for more than one year after approval of an application by the Commission. All permits shall expire upon the completion of the acts specified therein. The validity of any acts of work duly completed pursuant to an existing permit shall not be affected by the expiration of the aforesaid permit, but such work shall not be continued beyond the expiration date. Permits for activities may be renewed by the Commission upon application submitted at least 60 days before the expiration of the permit. Standards for issuance of renewals shall be the same as for the issuance of permits. Permits, including all of their conditions, shall be binding on successors and assignees of the permit holder.

§ 227-28. Bond.

To ensure compliance with the terms and conditions set forth in the permit or the restoration of protected wetlands and their functions, the Commission, at its discretion and when deemed necessary for the protection of the interests of the village or property owners affected by a project, may require the applicant or his contractor or agent to file a bond in an amount satisfactory to the Village Engineer and the Commission. Such bond shall be in a form satisfactory to the Village Attorney, or, in the alternative, the applicant shall make a cash deposit with the Village Treasurer in said amount. In the event that material is to be removed from the site, the applicant shall be required to obtain from the Board of Trustees a special permit for the excavation or removal of materials. The performance or rehabilitation bond provided for herein shall be in addition to any bond which may be required by the Board of Trustees in connection with the excavation or transportation of material.

§ 227-29. Insurance.

In addition to the foregoing, the applicant may, at the discretion of the Commission, be required to certify that she or he has insurance against liability which might result from the proposed operation or use covering any and all damages which might occur within three years of completion of such operations, in an amount to be determined by the Commission commensurate with the projected operation.

§ 227-30. Hours of operation; equipment.

Permits shall specify the permitted days and hours of operation and the type of equipment to be used.

§ 227-31. Other permits and approvals.

The issuance of any permit by the Commission pursuant to this chapter does not remove the obligation of the applicant to acquire any other permits or approvals required by law.

§ 227-32. Information to Fire Department.

Upon the completion of any new lake, pond or other source of water suitable for fire fighting, the Commission shall forward a vicinity sketch and information as to the size, accessways and estimated water volume of such body of water to the Fire Department serving the affected premises.

§ 227-33. Inspections.

The Commission or its agents may inspect any work conducted under a permit issued in conjunction with this chapter. The information gathered at these inspections can be used as the basis for a suspension or revocation of a permit.

§ 227-34. Stop-work orders; suspension or revocation of permits.

- A. Stop-work order. The Village Engineer shall issue a stop-work order whenever a violation of this chapter has occurred. The issuance of a stop-work order shall mandate a review by the Commission on the revocation of the permit. The stop-work order shall remain in effect until the Commission's decision on revocation.
- B. Suspension and revocation. The Commission may suspend or revoke a permit issued pursuant to this chapter after a public hearing on five days' written notice mailed to the applicant's address, return receipt requested, where it finds that the permittee has not complied with any or all terms of such permit, has exceeded the authority granted in the permit or has failed to undertake the project in the manner set forth in the application. A new permit will be required for the completion of work started under a permit that has been subsequently revoked.
- C. Written reasons for suspension and revocation. The Commission shall set forth, in writing, in the file it keeps regarding a permit application its findings and reasons for revoking or suspending a permit pursuant to this section.
- D. Revocation of permit in disturbed area. The Commission may require that an area already disturbed by work performed under a permit which has been revoked by the Commission be returned to its natural state by the permit holder. The work to be done to accomplish this restoration shall be performed in a fashion satisfactory to the Commission.

§ 227-35. Notification of completion; submission of as-built drawings.

Within 30 days after completion of all work allowed, under a permit granted in accordance with this chapter, the applicant shall notify the Village Engineer of such completion and shall submit as-built drawings, prepared and certified by an engineer, landscape architect or architect licensed by the State of New York. Within 30 days of such notification and submission, the Village Engineer and the Commission or their appointed representative, shall inspect the work for compliance with all conditions of the permit.

§ 227-36. Certification of completion.

When all work allowed under a permit is deemed acceptable, the Village Engineer or Commission shall issue a certificate of completion, which shall be accompanied by cancellation or return of any bond collected for the permit.

§ 227-37. Notification of noncompliance.

When any work allowed under a permit is not deemed acceptable, the Village Engineer or Commission shall so notify the applicant. The notification of noncompliance shall include a list of all conditions in violation of the terms of the permit and shall specify a time limit for the correction of all items so listed.

ARTICLE VI, Appeals and Judicial Review

§ 227-38. Rehearing.

Any applicant aggrieved by an action of the Commission may request, within 30 days, a rehearing of the decision of the Commission. The Commission may, in its discretion, grant such a request. Only one rehearing will be allowed for each application.

§ 227-39. Judicial review.

Any applicant aggrieved by any decision of the Planning Board may apply to the Supreme Court of the State of New York for relief in the manner provided by law.

§ 227-40. Condemnation.

In the event that any court of competent jurisdiction finds the action reviewed constitutes a taking without just compensation and the land so regulated merits protection under this Article, the court may, at the election of the Commissioner of the New York State Department of Environmental Conservation or Board of Trustees, respectively, either set aside the order or require the Commissioner or Board of Trustees, respectively, to proceed under the condemnation law to acquire the wetlands or such less-than-fee rights as have been taken.

ARTICLE VII, Penalties and Corrective Action

§ 227-41. Enforcing official designated.

The Village Engineer, at the direction of the Commission, shall be the official of the village responsible for administering and enforcing this chapter.

§ 227-42. Notice of violation.

Any person found violating any provision of this chapter or the terms and conditions of any permit granted hereunder or any person who owns property on which the violation occurs shall be served with a written notice, at the direction of the Village Engineer, stating the nature of the violation and providing a specific time for the satisfactory correction thereof.

§ 227-43. Personal liability.

Any person or persons violating any provision of this chapter or the terms and conditions of any permit granted hereunder or any person who owns property on which the violation occurs shall be liable to the village for any expense, loss or damage incurred by the village by reason of such violation.

§ 227-44. Penalties for offenses.

Pursuant to Title 23 of Article 71 of the Environmental Conservation Law, the following penalties shall apply:

- A. Civil penalties. Any person or persons who violate, disobey or disregard any provision of this chapter or any person who owns property on which the violation occurs shall be liable for a civil penalty not to exceed \$3,000 for every such violation. Each week's continuance of a condition violating this chapter shall be deemed a separate violation. Before assessment of the civil penalty, the alleged violator shall be afforded a hearing or opportunity to be heard before the Commission upon due notice and with rights to specification of the charges and representation by counsel.
- B. Restoration following violation. The Commission shall also have the power, following a hearing, to direct a violator to cease violation of this chapter and, under the Commission's supervision, to restore the affected controlled area and minimum activity setback area satisfactorily to its condition prior to the violation, insofar as that is possible, within a time specified by the Commission and under the supervision of the Commission. The exercise by the Commission of such power shall not preclude the assessment of a penalty under Subsection A hereof.
- C. Article 78 review. Any civil penalty or order issued by the Commission shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
- D. Fines. In addition to the above civil penalty, any person who violates any provision of this chapter shall be guilty of a violation pursuant to the Environmental Conservation Law,

punishable by a fine of not less than \$500 nor more than \$1,000. For a second and each subsequent offense, the violator shall be guilty of a misdemeanor, punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of not less than 15 days nor more than six months, or both. Each offense shall be a separate and distinct offense, and, in the case of continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. In addition to these punishments, any offender may be punished by being ordered by a court of competent jurisdiction to restore the affected wetland, watercourse or water body to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Commission.

§ 227-46. Judicial proceedings and injunctions.

Notwithstanding the penalties hereinabove provided, the village may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any provision of this chapter or any permit granted hereunder.

§ 227-46. Additional remedies.

The foregoing provisions for the enforcement of this chapter are not exclusive but are in addition to any and all rights and remedies of the village at law or in equity to restrain violations or threatened violations of this chapter or to obtain damages therefor.

ARTICLE VIII, Interpretation

§ 227-47 Applicability.

This chapter shall apply to all activities specified in Article IV conducted applications submitted on or after the effective date and to all subdivision or site development where no building permit has been issued as of the effective date hereof.

§ 227-48. Construal of provisions.

If any provision of this chapter shall be in conflict with any other chapter or law of the Village of Croton-on-Hudson or any law of the State of New York or political subdivision thereof the provisions of the more restrictive law shall apply.

Endnotes

1 (Popup)

Editor's Note: See § 24-0101 et seq. of the Environmental Conservation Law.

2 (Popup)

Editor's Note: See also Ch. 116, Environmental Quality Review.

3 (Popup)

Editor's Note: The current fee resolution is on file in the office of the Village Clerk. Also see Ch. 122, Fees.

4 (Popup)

Editor's Note: See Ch. 200, Subdivision of Land.